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No. 169.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THOMAS M. RIGGINS, APPELLANT,

v.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE UNITED STATES.

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STATEMENT OF CASE.

This is an appeal from an order of the Circuit Court of the United States for the Northern Division of the Northern District of Alabama denying appellant's petition for a writ of *habeas corpus*.

The petition alleges, in substance, that Riggins was unlawfully restrained of his liberty by the United States marshal for the Northern District of Alabama, for the reason that the indictment under which he was held for trial in said circuit court charged no offense cognizable under the Constitution and laws of the United States. (Rec. 2.)

The indictment was drawn under section 5508 of the Revised Statutes of the United States, which makes it an offense for two or more persons to conspire to injure or oppress, threaten or intimidate any citizen of the United States in the free exercise or enjoyment of any right or privilege guaranteed to him by the Constitution and laws of the United States, or because of his having so exercised the same. It alleges, in substance, that the appellant was one of a mob which forcibly dragged one Maples, a citizen of the United States of African descent, awaiting trial for an offense against the laws of Alabama, from the jail in which he was confined, in custody of a State sheriff and guarded by State militia, and hung him, in pursuance of a conspiracy for the purpose; and that said acts were done on account of his color.

Appellant contends that the courts of the United States have no jurisdiction to punish for a conspiracy entered into for such a purpose; and that it is a matter solely within the jurisdiction of the State courts.

THE STATUTE.

SEC. 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall

be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

THE QUESTION OF LAW.

Has a citizen of the United States, in the lawful custody of state officers, upon accusation of crime against state laws, a right secured to him by the Constitution and laws of the United States to be protected from mob violence, when such violence is directed against him on account of his color, and the state has sent militia to protect him and is endeavoring in every possible manner to afford the defendant a fair and impartial trial under the laws of the state?

THE GOVERNMENT'S POSITION.

In our brief, recently submitted in the case of *Hodges et al.* v. *United States*, No. 14, of this term, we considered at some length whether the thirteenth amendment authorized Congress to enact legislation making it an offense for two or more individuals to conspire to deprive a negro of the right to make contracts (and to labor?) solely on account of his color.

In that case we relied upon the constitutionality of section 1977 of the Revised Statutes of the United States, claiming, in substance, that its provisions were a contemporaneous construction of the thirteenth amendment, and that the power to enact appropriate legislation authorized the Congress to protect a colored man from the deprivation of one of the rights which inhere in

freedom—like the right to make a contract—when the exercise of the right was interfered with solely because of his color. In this case, unlike the Hodges case, there is *no statute* of the United States guaranteeing the right to be secure from mob violence, and, as appears from appellant's brief (p. 21), bills for the protection of such a right have been considered by the Congress, but have not been enacted. So far as this case can be supported under the thirteenth amendment, we submit it upon our brief filed in the Hodges case, as far as applicable, and upon the opinion of the learned judge in the court below. (R., pp. 17 et seq.)

This case is unlike the Hodges case in another particular. In the Hodges case the fourteenth amendment could not be invoked. In this case the learned judge, who dismissed the appellant's petition, took the view that, because the State had begun proceedings against Maples, had indicted him and held him awaiting trial, *he had a right secured by the fourteenth amendment* to be tried by the State. In the learned judge's opinion, the mandate of that amendment, "nor shall any State deprive any person of life, liberty, or property without due process of law," is held to be equivalent to a declaration that all persons, upon accusation of crime against State laws, *have the right to receive* a trial according to its established course of criminal procedure; and if individuals conspire to deprive him of the right, section 5508 of the Revised Statutes of the United States was intended to give the courts of the United States jurisdiction to punish them.

With reference to this argument, we respectfully submit the case upon the opinion of the learned judge in the lower court (Rec., p. 17 et seq).

The logic by force of which such a case as the present should be brought within the meaning and protection of the Constitution is stated most earnestly and cogently by the able judge below, who speaks with peculiar qualifications for forming a right and a large view of the entire race situation. His opinion of course registers an advance in this controverted field. Throughout the history of the world there are numerous impressive instances of the fact that what was formerly regarded as strange, revolutionary, or heretic was later an accepted commonplace of truth and justice for all future time. The large view, the advanced view, turned out to be the sound view, the just view. We can add nothing to the force of Judge Jones's reasoning and conclusion.

MILTON D. PURDY,
Assistant to the Attorney-General.

OTIS J. CARLTON,
Special Assistant to the Attorney-General.

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